



## Response to a first Office Action

Application No. 10/800,246

This communication as a response to a first Office Action having a mailing date of 03/23/2005 and setting forth a shortened statutory period for response of three months which would expire on 06/23/2005.

The applicant has studied the rejection of the claims carefully with the following conclusion.

Claims 1 - 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Donahey US Patent No. 5, 165,501. Applicant's claims are directed to a safety device to enhance the safety of a person using the ladder. Claim 1 has been amended to recite this safety feature. However, this is not the only facts that will render 1 - 5 patentable over the cited reference. applicant claims:

1) that the safety device is installed on top of a ladder.

Donahey's device may be called a "safety device" but it is used as a "multiple use ladder attachment for hollow rung ladders to safely support the ladder.

2) the top of the ladder is installed on a roof of an upstanding structure. With other words, the ladder is installed.

Donahey's ladder is not installed on a roof but leaning against it and is not in a location somewhat inwardly from an edge of the roof.

3) the safety device comprises a U-shaped frame.

Where is the U-shaped frame in Donahey in Fig. 6 as stated by the examiner? There is U-shaped frame 100 in Fig. 14 of Donahey but is not used a safety feature to

enhance a person's safety but is used as a stand-off against a wall.

- 4) each leg of the U-shaped frame is mounted to each rail of the ladder on top of the roof.

If there is a U-shaped frame in Fig. 6 and admittedly there is a U-shaped frame in Fig. 14, each of the legs of the U-shaped frame in Donahey is not mounted to each rail on top of the roof. In Fig. 14 the U of frame passes through a rung of the ladder to be adjustable, laterally.

- 5) means for creating a friction between each leg of said U-shaped frame and each rail of the ladder.

There is no friction being created between each leg of the U-shaped frame and each rail of the ladder in Donahey. Certainly, some of the clamps in Donahey create friction when they are tightened but they cannot be moved any more against the friction once they are installed, as is now claimed.

In view of all of the above, ~~claims~~ claims 1 - 5 cannot be termed as being anticipated under 35 U.S.C. 102 and the examiner is respectfully requested to reconsider the rejection of claims 1 - 5 and pass this application to an early allowance.



Pat Maiorano

Date:

4-6-2005